

# Notice of Allowability

Application No.

09/937,296

Examiner

David J Steadman

Applicant(s)

BRUNE ET AL.

Art Unit

1652

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed September 22, 2003.
2. ☒ The allowed claim(s) is/are 20,27 and 29.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

- |                                                                                                        |                                                                                     |
|--------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892)                                        | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)          |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 6 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____             |
| 3 <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. _____  | 7 <input type="checkbox"/> Examiner's Amendment/Comment                             |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
|                                                                                                        | 9 <input type="checkbox"/> Other _____                                              |

## **DETAILED ACTION**

### ***Status of the Application***

[1] Claims 20, 27, and 29 are pending in the application.

[2] Applicants' amendment to the claims filed September 22, 2003 is acknowledged.

The listing of claims as set forth in the September 22, 2003 amendment replaces all prior versions and listings of the claims.

[3] Applicants' amendment to the title of the specification in the amendment filed September 22, 2003 is acknowledged.

### ***Reasons for Allowance***

[4] In view of applicants' amendment to limit the claims to a specific NDPK, i.e., SEQ ID NO:2 having an IDCC label attached to cysteine at position 112, the written description and scope of enablement rejections under 35 USC 112, first paragraph, are withdrawn.

[5] In view of applicants' amendment to limit the claims to SEQ ID NO:2 having an IDCC label attached to cysteine at position 112, the rejection under 35 USC 103(a) is withdrawn. While the sequence of *Myxococcus xanthus* NDPK is known in the prior art (see page 8, lines 5-6 of the instant specification), the examiner can find no teaching or suggestion in the prior art of record to replace aspartate at position 112 of *M. xanthus* NDPK with cysteine, attach an IDCC label to the cysteine at position 112, and use the labeled NDPK to detect the presence of a nucleoside diphosphate as encompassed by the claims.

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**[6]** The following is an Examiner's statement of reasons for allowance. Claim 20, directed to a process for detecting a nucleoside diphosphate in a sample by detecting dephosphorylation of the phosphoenzyme form of SEQ ID NO:2 (*M. xanthus* NDPK with cysteine at position 112) with an IDCC label attached to cysteine at position 112, claim 27, which limits the nucleoside diphosphate to ADP or GDP and claim 29, which limits the process to a quantitative process, are allowable over the prior art of record. It should be noted that the term IDCC is an art-recognized abbreviation for N-[2-iodoacetamido) ethyl]-7-diethylaminocoumarin-3-carboxamide.

**[7]** Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Steadman, whose telephone number is (703) 308-3934. The Examiner can normally be reached Monday-Friday from 7:00 am to 5:30 pm. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Ponnathapura Achutamurthy, can be reached at (703) 308-3804. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Art Unit receptionist whose telephone number is (703) 308-0196.

David J. Steadman  
Patent Examiner  
Art Unit 1652

*Rebecca Lundy*  
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